

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

WILLIAM N. GRIFFIN,

Plaintiff,

vs.

No. CIV 13-0799 JB/GBW

DANIEL A. BRYANT, individually and in his capacity as Attorney for the Village of Ruidoso; DANIEL A BRYANT, PC, a New Mexico professional corporation; GUS R. ALBORN, individually and in his capacity as Mayor of the Village of Ruidoso; DEBI LEE, individually and in her capacity as Manager of the Village in Ruidoso; IRMA DEVINE, individually and in her capacity as Clerk for the Village of Ruidoso; VILLAGE OF RUIDOSO, a Municipal corporation,

Defendants.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on the United States Court of Appeals for the Tenth Circuit's Order, filed September 22, 2015 (Doc. 37). The primary issue is whether the Court should: (i) enter a final judgment; (ii) certify an interlocutory appeal pursuant to 28 U.S.C. § 1292(b); or (iii) enter an order indicating the proceedings are not final. Because the proceedings are not final, because the Court is reluctant to enter final judgment when a plaintiff has pending claims, and because no party has sought certification of an interlocutory appeal pursuant to 28 U.S.C. § 1292(b), the Court enters this order indicating the proceedings are not final.

### **PROCEDURAL BACKGROUND**

Plaintiff William N. Griffin's Complaint for Violation of Civil Rights, filed August 27, 2013 (Doc. 1)("Complaint"), brings claims against Defendants Daniel A. Bryant, Daniel A. Bryant, PC, Gus Raymond Alborn, Debi Lee, Irma Devine, and the Village of Ruidoso. See Complaint ¶¶ 2-8, at 2. On October 14, 2013, Gus Raymond Alborn, Irma Devine, Debi Lee, and the Village of Ruidoso (collectively, the "Ruidoso Defendants") filed The Ruidoso Defendants' Motion for Summary Judgment on Plaintiff's Complaint for Violation of Civil Rights, Damages, and for Declaratory and Injunctive Relief and Memorandum of Law in Support Thereof (Doc. 16)("Motion"). Bryant and Bryant, PC (the "Bryant Defendants"), did not join that Motion or file a separate motion.

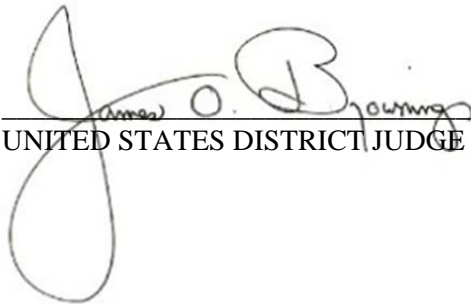
On June 18, 2014, the Court issued a Memorandum Opinion and Order (Doc. 30)("MOO"), granting in part and denying in part the Ruidoso Defendants' Motion. The MOO did not deal with the claims against the Bryant Defendants. See MOO at 88. The Court is very careful to follow the Tenth Circuit's instructions to enter a separate document designated as final judgment when a case is resolved. The Court did not enter a final judgment under rule 58 of the Federal Rules of Civil Procedure, because the case was not completely resolved. Moreover, no party requested that the Court certify an interlocutory appeal pursuant to 28 U.S.C. § 1292(b). The Court's general practice is not to send issues to the Tenth Circuit piecemeal if at all possible. The Court's MOO was not final and is not appealable.

When the Court saw Griffin's Notice of Appeal, filed July 16, 2014 (Doc. 32), the Court was surprised, for two reasons. First, Griffin had prevailed on much of his motion, so the Court was surprised that he is disappointed with the Court's MOO. Second, the Court did not state that

its MOO is appealable. Hence, in the Court's view, the MOO is not final and appealable as to all parties.

On September 22, 2015, the Tenth Circuit issued an order directing the Court to clarify the status of final judgment. Specifically, on this remand, the Tenth Circuit seeks clarification by way of (i) the entry of final judgment; (ii) certification of an interlocutory appeal pursuant to 28 U.S.C. § 1292(b); or (iii) entry of an order indicating the proceedings are not final. Because the Court has never considered the proceedings final, the Court will enter an order indicating the proceedings are not final.

**IT IS ORDERED** that the proceedings are not final.



UNITED STATES DISTRICT JUDGE

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*Plaintiff pro se*

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